

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

)

)

WT Docket No. 97-207

Calling Party Pays Service Offering)

in the Commercial Mobile Radio Service)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

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SEPTEMBER 17, 1999

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SUMMARY

Innovative pricing and service plans, in response to market-driven competition, is fueling the explosive growth in consumer demand for CMRS services across market segments. The growth in wireless mobile service plans, prepaid calling plans, and wireless phones as alternatives to wireline second phones is creating unprecedented growth in terms of revenue and customers for CMRS providers. What is compelling about these competitive market developments in CMRS is that they have occurred without Calling Party Pays ("CPP"), or government mandated billing and collection and customer notification requirements. Mandatory regulations are not needed to promote the development of CPP.

The Commission should reject any efforts to re-regulate ILEC billing and collection services for CPP. Alternative billing and collection services are available to provide these services to CMRS providers of CPP. ILECs should not be required to unbundling billing and collection because its a service and not a network element. Customer notification arrangements about CPP should be resolved privately, without Commission regulations. The Commission should not impose upon ILECs the costs that CMRS providers should bear in providing CPP services.

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INTRODUCTION

The United States Telephone Association ("USTA") hereby files its comments in response to the Commission's *Declaratory Ruling and Notice of Proposed Rulemaking*.

USTA is the principal trade association of the incumbent local exchange carrier industry.

USTA does not oppose voluntary Calling Party Pays ("CPP") arrangements. The marketplace, not mandatory Commission regulations, should govern the deployment of CPP. In comments filed in this proceeding, USTA has consistently argued that the Commission should not use CPP as a tool for steering development of CMRS, and that the Commission should not re-regulate ILEC billing and collection operations, which were detariffed in 1986,¹ and that

¹ *Detariffing of Billing and Collection Services*, CC Docket No. 85-88, *Report and Order*, 102 FCC 2d 1150 (1986).

ILECs should not be forced to bear the financial risks of CMRS providers offering CPP.²

USTA urges the Commission to permit the market to drive deployment of CPP. Mandatory ILEC billing and collection regulations should not be imposed to foster the development of CPP. In addition, the costs for deploying a nationwide notification system alerting the caller of costs associated with initiating CMRS calls should not be imposed upon ILECs. Private, voluntary, negotiations between ILECs and CMRS providers, not government mandates, should determine where, when and how CPP develops in the United States.

I. BILLING AND COLLECTION SERVICES SHOULD REMAIN DETARIFFED

There is no controversy over billing and collection for existing CMRS products. Parties should be permitted to privately and voluntarily negotiate the terms and conditions for billing and collection of CPP and customer notification. The record in this proceeding fails to establish that a billing and collection or customer notification problem exists regarding CPP, and in the absence of such evidence, the Commission should not impose mandatory ILEC billing and collection or customer notification regulations for CPP on unfounded speculation of potential problems.

Mandatory billing and collection for CPP is not necessary to promote wireless usage, lower service costs, and optional service plans. Assertions that re-regulation of billing and

² See, e.g., USTA's Reply Comments at 3, WT Docket No. 97-207 (June 8, 1999).

collection for CPP is needed now to promote the use of wireless telephony ignores the reality in the marketplace. Cellular and PCS rates have fallen dramatically since CTIA filed its petition in 1997 leading to this proceeding. Both cellular and PCS providers offer plans with varied features and bundled minutes such that the services provided can be said to be flat-rated. Consumers have responded to these plans by purchasing CMRS services in unprecedented numbers without mandatory billing and collection for CPP. In any event, the Commission should not be in the business of promoting one form of telecommunications service (CMRS) over any another service.

II. BILLING AND COLLECTION IS NOT A NETWORK ELEMENT

The Commission is considering whether billing of CPP calls by ILECs should be an unbundled network element.³ A CPP arrangement - - billing and collection services provided by ILECs to CMRS providers - - is not a network element, and therefore not subject to the unbundling requirements of Sections 251 and 252 of the Act. As defined by the Act:

The term network element means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other

³ *Notice of Proposed Rulemaking* at 33-34, ¶¶66-67.

provision of a telecommunications service.⁴

Clearly by definition, billing and collection services provided by an ILEC in support of CPP cannot be classified as a network element. The Commission should reject efforts to impose upon ILECs an obligation to unbundle billing and collection services or mandate reciprocal compensation.

Even if billing and collection for CPP were defined as a network element, ILEC network elements must be unbundled pursuant to the Supreme Court's decision in *AT&T v. Iowa*.⁵ The Court instructed the Commission to apply the necessary and impair standards of Section 251(d)(2) in its review of ILEC unbundling obligations in Section 251(c)(3). According to the Court, the 1996 Act "requires the Commission to determine on a rational basis *which* network elements must be made available, taking into account the objectives of the Act and giving some substance to the necessary and impair requirements."⁶ Moreover, the Court concluded that the Commission's mandate "is not achieved by disregarding entirely the availability of elements outside the network, and by regarding *any* increased cost or decreased service quality as establishing a necessity and impairment of the ability to provide services."⁷

⁴ 47 U.S.C. §153(29).

⁵ 119 S.Ct. 721 (1996).

⁶ *Id.* at 736.

⁷ *Id.*

Imposition by the Commission of regulations that would require ILEC unbundling of billing and collection arrangements must be tested against the necessary and impair standards of Section 251(d)(2). USTA strongly argues that mandatory access to ILEC billing arrangements would fail the necessary and impair standards of Section 251(d)(2) as interpreted by the Court.

The Commission stated its intent to apply the standard it adopted in the UNE remand proceeding to its determination on whether ILECs must unbundling billing operations and collections pursuant to Section 251(c)(3) of the Act.⁸ On September 15, 1999, the Commission adopted new rules for ILEC unbundling.⁹ Although the final order has not been released, the Commission's impairment standard provides that an ILEC is not required to unbundle a specific network element where there are competitive alternatives which are actually available in the market, and the lack of access to the ILEC UNE would materially diminish services which a competitor would otherwise provide. Even under the Commission's standard, mandatory ILEC billing and collection is not needed for CPP.

In the *Notice of Proposed Rulemaking*, the Commission noted that CTIA acknowledges that mandatory ILEC billing and collection for CPP is not required.¹⁰ In addition, alternative

⁸ *Notice of Proposed Rulemaking* at 33, ¶66.

⁹ FCC Press Release, *FCC Promotes Local Telecommunications Competition Adopts Rules on Unbundling of Network Elements*, released September 15, 1999.

¹⁰ *Notice of Proposed Rulemaking* at 29-30, ¶58.

billing and collection options are available to CMRS providers that make mandatory ILEC billing and collection unnecessary. Moreover, to re-regulate billing and collection operations of ILECs is even more unnecessary given the competitive market for such services. The costs of implementing mandatory CPP will be extremely high. As USTA noted in earlier comments, some commenters raised the issue of the significant costs involved in deploying CPP:

[T]he potential costs imposed on U.S. telecommunications carriers to establish a ubiquitous, functional CPP-calling system on a local, regional or nationwide basis are enormous.¹¹

USTA believes that mandatory CPP, administered pursuant to mandatory Commission regulations, would be less likely to send the proper pricing signals to users. The best way to ensure that users receive proper market signals is to let the competitive markets operate without regulation. In doing so, CMRS providers will be free to offer First-Minute-Free calling, CPP, and billing and service arrangements that competitive conditions warrant.

III. MARKET-DRIVEN COMPETITION IS FUELING UNPRECEDENTED GROWTH IN MOBILE TELEPHONY AND NON-ILEC BILLING ALTERNATIVES

The growth and development of alternative billing and collection arrangements for CMRS and other telecommunications services makes mandatory ILEC billing and collection for CPP an unwarranted regulatory intrusion into competitive markets. In addition, mandatory

¹¹ USTA Reply Comments at 4, WT Docket No. 97-207, *citing* PageNet Comments at 10; Centennial Cellular Comments at 18 (January 16, 1998).

ILEC billing and collection for CPP may have the unintended impact of being anti-competitive to an emerging billing and customer care industry. According to a recent report on publicly traded companies providing billing and collection services to the telecommunications industry:

The demand for billing and customer care remains strong.... Billing and customer care remains an important competitive tool in the telephony services war and is fueling growth of the industry to better than 25% on a compounded annual basis to \$15 billion in 20005 from \$3 billion last year. New and existing billing vendors alike are realizing good growth trends, and despite the number of players, the opportunities are plentiful. Most significant, pricing is robust, with most companies raising rather than lowering prices as carriers are willing to pay for flexible, scalable products that are proven. There is no sign that these trends will slow down anytime soon; now it is just a matter of time before the equity markets play catch-up.¹²

Clearly, an entire billing and collection industry has emerged as an alternative to ILEC billing and collection arrangements. The Commission need look no further than at this industry as evidence that mandatory ILEC billing and collection for CPP would be an exercise in regulatory overkill.

Without CPP, the enormous growth of wireless telephony is undeniable. Regarding the growth in overall wireless telephony usage, pricing competition, prepaid calling plans usage, and wireless phones as competitive alternatives to wireline second lines - - issues the Commission's

¹² SG Cowen Securities Corporation *Telecom Billing & Customer Care Quarterly* at 3 (May 28, 1999). The report provides an in-depth review of publicly traded companies Amdocs, Billing Concepts, Convergys, CSG Systems, International Telecommunications Data Systems ("ITDS"), LHS Group, and Saville Systems.

Notice of Proposed Rulemaking raises as justification for adopting CPP - - the Commission's own recent annual report assessing the growth in wireless telephony¹³ demonstrates that market-driven competition, not mandatory government regulations, best serves the public's interest.

The Commission noted that as of December 1998, "the mobile telephony sector generated over \$33 billion in revenues, increased subscribership from 55 million to 69.2 million, and produced a national penetration rate of nearly 26 percent."¹⁴ The \$33 billion in 1998 revenue was more than a 20% increase over 1997 revenue, while the nearly 14 million new subscribers over the same period represented a 23 percent growth over 1997 figures.¹⁵

Although the focus of the *Notice of Proposed Rulemaking* is CPP as applied to two-way mobile telephony, the Commission sought comment from paging carriers on "Paging Party Pays."¹⁶ Yet, the Commission concluded in its annual report on the wireless industry that "the paging/messaging sector remain a highly competitive business with numerous providers in each market. The continued competitive threats from other service providers, such as mobile telephone, mobile data and even satellite providers, have encouraged paging operators to

¹³ *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Fourth Report*, released June 24, 1999.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 8.

¹⁶ *See Notice of Proposed Rulemaking* at 1, note 1.

continue to enhance and expand their product offerings with two-way messaging, voice messaging, and enhanced data services, such as e-mail and stock quotes."¹⁷ Imagine, in the absence of PPP, the paging industry has responded to external and internal pressures from market-driven competition to create innovative product offerings which consumers can elect to purchase. Again, market forces, not mandatory government regulations, must drive the growth, price competition, and product offerings in the CMRS telecommunications industry.

With respect to pricing competition, the Commission's annual wireless report acknowledged the substantial consumer benefits derived from so-called digital-one-rate ("DOR") plans. As the report states, "During the second half of 1998, consumer response to DOR plans appears to have been strong."¹⁸ Moreover, the report states "AT&T ... added 850,000 DOR subscribers" and that "AT&T also reported that during ... 1998, minutes-of-use by customers in its cellular license areas had increased by 29.5 percent over 1997."¹⁹ In addition, Bell Atlantic added nearly 400,000 digital subscribers during the fourth quarter of 1998 and attributed its growth to these DOR-type plans."²⁰ According to the Commission, "the available evidence, taken together, makes it clear that the average price for mobile telephony has continued to fall

¹⁷ *Fourth Report* at 63.

¹⁸ *Id.* at 12.

¹⁹ *Id.*

²⁰ *Id.* at 21.

substantially since the *Third Report* ... continuing the trend of the last several years.”²¹

Innovative pricing plans and competition from new entrants, not mandatory government regulations, has prompted consumers to respond favorably to CMRS services.

The Commission’s annual report on the wireless industry clearly identifies efforts by CMRS providers “to target homes with wireline-based second telephone lines.”²² With innovative pricing plans, CMRS providers are making inroads into this market.

In the prepaid wireless market, the Commission’s annual wireless industry report stated that “[t]he use of prepaid billing plans has been on the rise”²³ According to the Commission, a number of PCS providers reported that prepaid wireless users “are having an increasing impact on their operations.”²⁴ Several providers of prepaid wireless services reported that 20 percent or more of their customers were on prepaid plans.²⁵

The numbers for CMRS usage across market segments is certainly greater than the numbers reported in the Commission’s recently released *Fourth Report* on the CMRS industry. Again, the growth in consumer demand for, and use of, CMRS services has occurred without

²¹ *Fourth Report* at 12.

²² *Id.* at 12-15.

²³ *Id.* at 16.

²⁴ *Id.*

²⁵ *Id.* at 16-17.

mandatory re-regulation of ILEC billing and collection services for CPP. These developments demonstrate the importance of the Commission permitting market forces to drive competition in the CMRS industry.

IV. NOTIFICATION ISSUES SHOULD BE RESOLVED BY THE INDUSTRY NOT THE COMMISSION

USTA continues to support an industry solution to notification and consent issues involving CPP. As USTA has previously stated:

CMRS providers and incumbent LECs have strong incentives to make sure that such procedures are in place when CPP is implemented, in order to protect consumers, reduce potential confusion about billing practices, and minimize uncollectibles.

Notification and consent measures can be implemented in many ways.... CMRS providers and incumbent LECs are motivated to make sure that notification and consent procedures are easy for consumers of all states to understand and execute, even if the content of such procedures varies slightly.²⁶

There is no evidence in this proceeding that mandatory nationwide regulations are necessary to notify consumers about CPP billing and collection procedures.

CONCLUSION

In prior comments filed in this proceeding, USTA outlined the potential for unwarranted

²⁶ USTA Opposition Comments at 5, WT Docket No. 97-207 (May 8, 1998).

Commission regulation of CPP service offerings:

The CPP regulation schemes supported by some commenters would require incumbent LECS to bill and collect for CMRS providers' CPP offerings. At a minimum, these schemes would require the Commission to re-regulate LEC billing and collection operations, which were deregulated in 1996. If permitted, these schemes would also unjustly force LECS to bear the financial risks of CMRS providers' offering of CPP.²⁷

As a practical matter, however, the Commission's proposed regulations for deployment of CPP should not be adopted. CPP did not drive the developments cited in the Commission's annual report on the CMRS industry. Competition, innovation, and market demand is driving the growth in CMRS revenue, customers, market penetration, and CMRS as a legitimate alternative to wireline services. Billing and collection alternatives are readily available in the marketplace to CMRS providers. The Commission has no legal or public policy basis for requiring costly and unwarranted ILEC unbundling of billing and collection arrangements or reciprocal compensation for CPP. Billing and collection is a service not a network element.

Under the circumstances, CPP billing and collection and customer notification is nothing more than a solution in search of a problem. USTA urges the Commission to permit competitive markets in billing and collection, and CMRS services, not mandatory government regulations imposing the costs for implementing CPP on ILECs, to promote the growth and development of CMRS. Private, voluntary, negotiations between CMRS providers and billing and collection

²⁷ USTA Reply Comments at 2-3, WT Docket No. 97-207 (June 8, 1998).

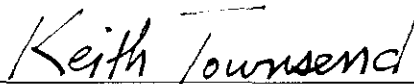
service providers should be the cornerstone of any Commission policy involving deployment of CPP. The Commission can demonstrate its commitment to private sector-based solutions to telecommunications industry issues by permitting interested parties to voluntarily negotiate billing and collection arrangements and customer notification procedures by forbearing from imposing yet more costly, unnecessary, regulations on ILECs. Moreover, the appropriate market for assessing the need for services in support of CPP is the domestic telecommunications market, not the very different European telecommunications market.

Respectfully submitted,

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